

Fact Sheet for Members of the 2009 House of Delegates to Be Used to Inform the Constituent and Component Members

1. Why were two reports sent out under the attorney-client privilege to members of the 2009 House of Delegates?

The two reports that were sent are privileged because they contain our attorney's advice on numerous ADA matters. In order to protect the ADA's legal interests, that privilege must be maintained. Specifically, disclosure of the reports outside of those covered by the privilege could result in its loss. Loss of the privilege could potentially result in the compelled public disclosure of the reports themselves and of the highly confidential, privileged discussions of them and of all the issues they review. Such disclosure could include having to produce the reports and all related materials, including information about privileged discussions, to litigation opponents of the ADA.

In addition, disclosure of privileged information by an individual having a duty **not** to do so can expose that individual to personal liability. Loss of the privilege can also subject anyone who was present at a privileged discussion to being deposed or called as a witness to testify at any trial involving the matters discussed. With respect to personal financial liability, an individual who engages in conduct that results in a waiver of the attorney-client privilege would not be protected by the indemnification clause in Chapter XIX of the ADA *Bylaws*.

2. What happened?

Early in 2009, the Board of Trustees became aware of some irregularities within the ADA and an increase in customer concerns with ADAidm. [Early in 2007, ADA Business Enterprises Inc. (ADABEI) had become a 50% owner in ADAidm.] In order to fulfill the ADA Board's fiduciary responsibilities and Duty of Care, the ADA hired outside counsel to look into these matters.

Final reports (the attorney client privileged reports mentioned above) were presented to the Board of Trustees in June 2009. The Board spent a full day with outside counsel and the external auditing firm, hired by outside counsel, to dig deep into various aspects of the ADA, including the subsidiaries. Upon hearing the reports and their recommendations to address the problems and shortcomings that were uncovered, the ADA Board took immediate and decisive actions to correct the problems. These reports were offered to the House of Delegates, so that the House was well informed on these matters of significance. These reports were discussed in depth during the 2009 House of Delegates. Resolutions reflecting the House's responses came out of the House.

3. Is the ADA going to sue anyone?

It is premature to answer, given the complexity of the matters contained in the reports and the continued discovery process. Rest assured that those individuals or entities that exposed the ADA and its related entities to harm will be held accountable for their actions as appropriate. The ADA will carefully analyze who is responsible for the various injuries it has suffered, the amount of damages those injuries have resulted in, and the amount and quality of evidence available to establish potential claims against those who may be culpable.

4. What is this going to cost the ADABEI?

Outside audit and legal fees currently exceed \$850,000. Other expenses related to the wind down of ADAidm are approaching \$650,000 for a total of \$1.4 million in related expenses. Approximately \$3.2 million in customer/member refunds have been made by ADABEI. In addition vendor payments have amounted to slightly over \$1 million. The Board very much wanted to get to the bottom of these problems and directed that the investigation be conducted accordingly.

Also, the Board wanted to know not only the problems, but to receive expert recommendations on how to make the necessary adjustments. It is important to understand that the cost of failing to address these problems would ultimately be much higher.

5. Who is paying for all this?

Some of the costs of the investigation are being charged to the ADA and the costs directly attributable to ADABEI are being charged to ADABEI. The most cost effective manner in which to cover the additional costs to ADABEI is a line of credit from ADA to ADABEI consistent with current market rates and covenants. This line of credit prevents any cash flow problems for ADABEI, so that it may continue to operate a successful business, while providing refunds to ADAidm customers, and paying ADAidm vendors. This line of credit represents an ADA investment in its wholly owned subsidiary and is far less costly than obtaining outside capital from a bank in the form of a loan. ADABEI did draw down on this available line of credit, and the entire amount, including interest, was repaid within 30 days to ADA.

As of August 31, 2009, the ADAidm offices in Utah have been closed and all wind-down operations moved to the ADABEI offices in Chicago. To date, over 95% of all customer accounts have been resolved and services for website hosting and maintenance transitioned to an interim vendor, with sufficient resources to complete the transition. Approximately \$3.2 million in customer/member refunds have been made and outstanding vendor payables have been paid.

6. What will happen to ADABEI?

ADABEI continues to operate successful business affinity programs with MATSCO and Care Credit and other vendors that provide tremendous benefit to both our members and to the ADA, in the form of non-dues revenue. A new credit card endorsement deal with US Bank was recently negotiated, resulting in approximately \$3.6 million in new ADABEI revenues. The Board Committee on the Future of ADABEI studied the advantages and disadvantages of the for-profit subsidiary on behalf of the ADA, and the Committee was directed to produce a report prior to the 2009 House of Delegates. That report, along with a minority report was delivered to this House of Delegates.

7. What has been done to correct the issues identified in the reports?

The ADA Board of Trustees took immediate and deliberate actions by appointing Dr. Robert Faiella, ADA First District Trustee, as Chair of ADABEI in June 2009, to resolve ADAidm issues and oversee the ongoing ADABEI affinity programs. The ADABEI Board was restructured to provide ADA with direct control of ADAidm.

Under Dr. Faiella's oversight, ADABEI and ADA project team actions have resulting in the following:

- The ADABEI made appropriate senior staff personnel changes. As you know ADABEI is an "at-will" employer, and in addition, as a matter of policy does not discuss human resource matters which should be kept private.
- The ADAidm ownership was restructured to provide ADA with complete ownership.
- ADABEI began immediately to wind down the operation of ADAidm, always with an emphasis on protecting those ADA members who were ADAidm customers. ADAidm ceased operations on August 31, 2009.
- The ADAidm customers and stakeholders were immediately contacted regarding the wind down of the ADAidm entity.

- ADAidm accounting systems were analyzed and financial statements were restated to reflect the accurate financial state of the entity.
- Customers' and vendors' accounts were clarified, and payments went out immediately as the customers' and vendors' accounts were validated. ADABEI made the commitment to have all of these financial obligations fulfilled by the middle of September. Slightly over \$4million has been paid to vendors and refunded to ADAidm customers.
- A new ADA Chief Financial Officer and a new Chief Technology Officer have been hired
- In addition, the ADAidm entity was physically closed in Salt Lake City on July 31, 2009. This timeline starting from the June notification of the serious financial issues at ADAidm was extremely aggressive. The wind down project was delivered on time to the ADABEI and the ADA Board, due to a well staffed integrated team of both ADABEI and ADA staff, working in total cooperation with outside Consultants, including legal and accounting.

8. How do we know we won't be in this situation again?

We all know that it is not unheard of for history to repeat itself. However, the ADA Board has been fully intent on understanding what happened over the past few years so that the ADA can be better protected in the future. There are a number of corrective actions and safeguards that can be put in place to reduce the possibility that these types of things could happen again.

In this regard, a Board work group was convened to begin to thoroughly analyze the Board rules and each ADA Board standing committee was requested to evaluate its workings in light of Governance Best Practices. After completion of this process, the Rules of the Board will be updated accordingly. In addition, significant enhancements in orientation and governance training for existing and incoming Trustees is underway, using outside consultants.

9. Regarding ADA financial issues:

In 2009, the ADA also learned of significant problems relating to the financial operations and controls within ADA. These problems are in the process of being addressed and as noted, a new Chief Financial Officer has been hired, and has extensive experience with turning around troubled companies and building best practice financial and accounting systems. The ADA Audit Committee is in the process of selecting new external and internal auditors to assist ADA in the establishing the necessary financial controls and financial system best practices.

10. What about ADABEI's business venture called the National Electronic Dental Exchange?

It was an unsuccessful venture related to data warehousing and cost ADABEI approximately \$2 million before it was discontinued.